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Attorneys for Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PATRICIA DESANTIS, individually and as
Successor in Interest for RICHARD
DESGANTIS, deceased, and as Guardian Ad
Litem for DANI DESANTIS.

Case No.: C 07 3386 JSW

**STIPULATION AND [PROPOSED]
ORDER TO ALLOW PLAINTIFFS TO
FILE A FIRST AMENDED COMPLAINT**

Plaintiffs

V.

CITY OF SANTA ROSA, JERRY SOARES,
RICH CELLI, TRAVIS MENKE, PATRICIA
MANN and DOES 1 through 25, inclusive,

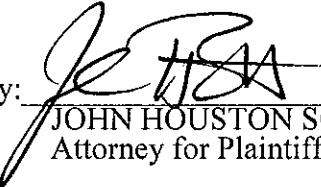
Defendants.

1 The parties stipulate to allow Plaintiffs to file a First Amended Complaint to add a
2 state wrongful death cause of action to the Complaint now that their six month claim has
3 been denied.

4 The parties also stipulate that Defendants shall file their answer to the First Amended
5 Complaint within ten (10) days of service of the amended complaint.
6
7
8

9 **DATED:** October 30, 2007

SCOTT LAW FIRM

10 By: 

11 JOHN HOUSTON SCOTT
12 Attorney for Plaintiffs
13

14 **DATED:** October ___, 2007

15 By: 

16 CAROLINE FOWLER
17 Attorney for Defendants
18

19 **ORDER**

20 Based on the stipulation of the parties, and good cause appearing therefor;
21
22 **IT IS HEREBY ORDERED** that the plaintiffs may file their First Amended Complaint
23 to add a state wrongful death claim as a supplemental claim to the Section 1983 claims.
24

25 **DATED:**

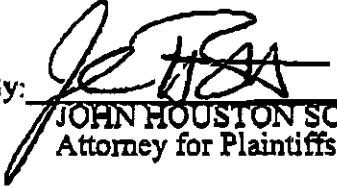
26 Honorable Jeffrey S. White
27 U.S. District Court Judge
28

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2 state wrongful death cause of action to the Complaint now that their six month claim has
3 been denied.

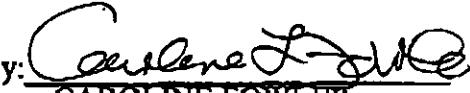
4 The parties also stipulate that Defendants shall file their answer to the First Amended
5 Complaint within ten (10) days of service of the amended complaint.
6
7
8

9 DATED: October 30, 2007

SCOTT LAW FIRM

10
11 By: 
12 JOHN HOUSTON SCOTT
13 Attorney for Plaintiffs

14 DATED: October 31, 2007

15
16 By: 
17 CAROLINE FOWLER
18 Attorney for Defendants

19 ORDER

20 Based on the stipulation of the parties, and good cause appearing therefor;

21 **IT IS HEREBY ORDERED** that the plaintiffs may file their First Amended Complaint
22 to add a state wrongful death claim as a supplemental claim to the Section 1983 claims.
23

24 DATED:

25
26 Honorable Jeffrey S. White
27 U.S. District Court Judge

EXHIBIT “A”

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA DESANTIS, individually and as Successor in Interest for RICHARD DESANTIS, deceased, and as Guardian Ad Litem for DAN DESANTIS.) Case No. C 07-03386 JSW

Plaintiffs,) **FIRST AMENDED COMPLAINT FOR
DAMAGES**

CITY OF SANTA ROSA, JERRY)

JURY TRIAL DEMANDED

PATRICIA MANN and DOES 1 through 25, inclusive,

Defendants.

8

1 COMES NOW PLAINTIFFS, who complain of Defendants, and each of them, and alleges as
2 follows:

3 **I. JURISDICTION AND VENUE**

4 1. This action arises under Title 42 of the United States Code § 1983. Jurisdiction is
5 conferred pursuant to Title 28 of the United States Code §§1331 and 1343.

6 2. The claims alleged herein arose at or near Santa Rosa California. Venue of this action
7 lies in the United States District Court for the Northern District of California. 28 U.S.C. §
8 1391(b)(2).

9 **II. PARTIES**

10 3. Plaintiff Patricia DeSantis is the wife of Richard DeSantis, deceased. They were
11 married on December 18, 1998. Patricia DeSantis brings this action as an heir of the decedent and
12 as Successor in Interest of the decedent.

13 4. Plaintiff Dani DeSantis is the daughter and heir of the decedent, Richard DeSantis.
14 At all times mentioned herein, Dani DeSantis was a minor, born on April 21, 2004. This action is
15 brought by Patricia DeSantis on behalf of Dani DeSantis as her guardian ad litem.

16 5. Defendant City of Santa Rosa, and at all times mentioned herein was, a municipal
17 corporation duly organized and existing under the laws of the State of California.

18 6. Defendant Jerry Soares, at all times mentioned herein, was a police officer employed
19 by the Santa Rosa Police Department as a sergeant.

20 7. Defendant Rich Celli, at all times herein mentioned was a police officer employed by
21 the Santa Rosa Police Department as a sergeant.

22 8. Defendant Travis Menke, at all times mentioned herein, was a police officer
23 employed by the Santa Rosa Police Department.

24 9. Defendant Patricia Mann, at all times mentioned herein, was a police officer
25 employed by the Santa Rosa Police Department.

26 10. Plaintiffs do not presently know the true names and capacities of Defendants
27 DOES 1 through 25, inclusive, and therefore sue them by these fictitious names. Plaintiffs are

1 informed and believe, and on that basis allege, that DOES 1 through 25, and each of them, were
2 responsible in some manner for the injuries and damages alleged herein and claimed in this lawsuit.
3 Plaintiffs will seek leave to amend this Complaint to add their true names and capacities when they
4 have been ascertained.

5 11. In doing the acts and/or omissions alleged herein, Defendants and each of them acted
6 within the course and scope of their employment for the City of Santa Rosa and under color of
7 authority and/or under color of state law.

8 12. In doing the acts and/or omissions alleged herein, Defendants, and each of them,
9 acted in concert with each of said other Defendants herein.

10 **III. STATEMENT OF FACTS**

11 13. On Easter Sunday, April 8, 2007, Richard DeSantis, his wife and two children had
12 dinner with other family members. Richard DeSantis was planning to return to work the next day
13 after being out with a disabling leg injury. During his recovery from leg surgery Richard DeSantis
14 was diagnosed with bi-polar disorder.

15 14. Later that night Richard DeSantis told his wife, Patricia DeSantis, that he heard
16 (noises/voices) in the attic. His wife tried to assure him that everything was fine. Sometime
17 thereafter Richard DeSantis fired shots into the ceiling. His wife secured the gun and called 911 for
18 medical assistance. She reported that her husband was bi-polar and needed help.

19 15. Soon thereafter several police officers arrived instead of an ambulance, or medical
20 professionals. The police did not attempt to provide medical attention. Rather, the police drew their
21 weapons, prepared for combat, and ordered Richard DeSantis to come out of the house.

22 16. Richard DeSantis and his wife, holding their two year old daughter Dani, came out of
23 the house in plain view of the police officers. The officers were positioned approximately 80 feet
24 away, with guns drawn. The officers ordered Richard DeSantis to approach them. His wife told the
25 officers that the gun was in the house and that this was a mental health issue. She also physically
26 demonstrated that her husband was unarmed.

1 17. Richard DeSantis then approached, as directed, with his hands raised. When he got to
2 within approximately 30 feet of the officers he was ordered to lie on the ground. Richard DeSantis
3 got on the ground but did not stay down. He rose and approached the officers. At that point Sgt.
4 Jerry Soares fired a non-lethal projectile breaking DeSantis' arm. Immediately thereafter Sgt. Rich
5 Celli and Officers Travis Menke and Patricia Mann opened fire with lethal weapons, including a
6 rifle. Two shots struck Richard DeSantis' upper torso causing his death. A third shot struck the
7 kitchen door of the family home.

8 18. Defendants used excessive and unreasonable force thereby causing Richard DeSantis'
9 death. In addition, and/or in the alternative, Defendants failed to provide medical assistance for
10 Richard DeSantis, thereby causing his death.

11 19. Defendants' unreasonable and excessive use of force against Richard DeSantis
12 and/or in the alternative, Defendants' failure to provide medical assistance for Richard DeSantis, was
13 also the result of customs and policies of the Santa Rosa Police Department.

14 20. The City of Santa Rosa authorized, condoned, and/or ratified the conduct of
15 Defendants, and each of them.

IV. STATEMENT OF DAMAGES

17 21. As a result of the acts and/or omissions of Defendants, and each of them, the decedent
18 suffered severe injury and pain prior to his death, the loss of his life, and the loss of his rights
19 guaranteed by the Constitution of the United States, in amounts according to proof.

20 22. As a result of the acts and/or omissions of Defendants, and each of them, the
21 Plaintiffs, and each of them, suffered the loss of the familial association of the decedent, including
22 society, comfort, and affection, in amounts to be determined according to proof.

23. As a result of the acts and/or omissions of Defendants, and each of them, the
24 Plaintiffs, and each of them, suffered the loss of the services and economic support of the decedent
25 in amounts to be determined according to proof.

24. As a result of the acts and/or omissions of Defendants, and each of them, the Plaintiffs, and each of them, incurred expenses for the funeral and burial of the decedent in amounts to be determined according to proof.

25. The acts and/or omissions of the individual Defendants, and each of them, as alleged in this Complaint, were willful, wanton, reckless, malicious, oppressive and/or done with a conscious or reckless disregard for the constitutional rights of the decedent. Plaintiffs therefore pray for an award of punitive and exemplary damages according to proof.

26. Plaintiffs retained private counsel to represent them in this matter and are entitled to an award of attorneys' fees.

FIRST CAUSE OF ACTION

(42 U.S.C. §1983 - Excessive Force)

27. Plaintiffs hereby re-allege and incorporate by reference as though fully set forth herein all prior paragraphs of this Complaint.

28. In doing the acts and/or omissions alleged herein, Jerry Soares, Rich Celli, Travis Menke, Patricia Mann, and Does 1 - 25, and each of them, used excessive and unreasonable force against Richard DeSantis, in violation of his rights under the Fourth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

SECOND CAUSE OF ACTION

**(42 U.S.C. §1983 - Excessive Force)
(Against CITY OF SANTA ROSA)**

29. Plaintiffs hereby re-allege and incorporate by reference as though fully set forth herein all prior paragraphs of this Complaint.

30. The acts and/or omissions of Defendants as alleged herein, (1) were caused by customs or policies of the Santa Rosa Police Department regarding the use of force; (2) were caused

1 by inadequate training, supervision, and/or discipline of officers by the Santa Rosa Police
2 Department regarding the use of force; (3) were caused by deliberate indifference of the Santa Rosa
3 Police Department to the excessive use of force; and/or (4) were ratified by final decision-makers of
4 the Santa Rosa Police Department.

5 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

6 **THIRD CAUSE OF ACTION**

7 **(42 U.S.C. §1983 - Deliberate Indifference)**

8 31. Plaintiffs hereby re-allege and incorporate by reference as though fully set forth
9 herein all prior paragraphs of this Complaint.

10 32. In doing the acts and/or omissions alleged herein, Defendants Jerry Soares,
11 Rich Celli, Travis Menke, Patricia Mann, and Does 1 - 25, and each of them, were deliberately
12 indifferent to the need to summon or provide emergency medical care for Richard DeSantis, in
13 violation of his rights under the Fourteenth Amendment to the United States Constitution.

14 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

15 **FOURTH CAUSE OF ACTION**

16 **(42 U.S.C. §1983 - Deliberate Indifference)**
17 **(Against CITY OF SANTA ROSA)**

18 33. Plaintiffs hereby re-allege and incorporate by reference as though fully set forth
19 herein all prior paragraphs of this Complaint.

20 34. Defendants' failure to and/or delay in providing emergency medical care as alleged
21 herein (1) was caused by customs or policies of the Santa Rosa Police Department; (2) was caused
22 by inadequate training, supervision, and/or discipline of officers by the Santa Rosa Police
23 Department; (3) was caused by deliberate indifference of the Santa Rosa Police Department; and/or
24 (4) was ratified by final decision-makers of the Santa Rosa Police Department.

25 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

FIFTH CAUSE OF ACTION

(42 U.S.C. SECTION 1983)
(DEPRIVATION OF FAMILIAL RELATIONSHIP)
(Against all Defendants)

35. PLAINTIFFS hereby re-allege and incorporate by reference as though fully set forth herein all prior paragraphs of this Complaint.

36. By and through the acts and omissions alleged herein, Defendants, and each of them, deprived Plaintiffs of the familial relationship with their husband and father thereby violating said Plaintiffs' rights under the First and/or Fourteenth Amendments of the United States Constitution.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

SUPPLEMENTAL STATE CLAIM

SIXTH CAUSE OF ACTION
(WRONGFUL DEATH - C.C.P § 377.60)

37. PLAINTIFFS hereby re-allege and incorporate by reference as though fully set forth herein all prior paragraphs of this Complaint.

38. In doing the acts and/or omissions alleged herein the defendants, and each of them, negligently or recklessly cause the death of Richard DeSantis. The City of Santa Rosa is liable under the doctrine of *respondeat superior*. As a result of the negligence or recklessness of the defendants, the plaintiffs suffered injuries and damages as are alleged herein.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

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JURY TRIAL DEMAND

Plaintiffs hereby requests a jury trial on all issues so triable.

PRAYER

1. For compensatory damages and other special damages according to proof;
2. For general damages according to proof;
3. For punitive damages against the individual Defendants according to proof;
4. For prejudgment interest at the legal rate according to proof;
5. For costs and attorney's fees; and
6. For such other relief as the Court may deem proper.

Respectfully submitted,

Dated: November 12, 2007

SCOTT LAW FIRM

By:

John Houston Scott,
Attorney for Plaintiff